REMARKS

The enclosed is responsive to the Office Action mailed on December 28, 2005.

At the time the Office Action was mailed, claims 1-6 and 8-21 were pending. By way of

the present response, the Applicant has: amended claim 1; added no new claims; and

canceled no claims. As such, claims 1-6 and 8-21 remain pending. The Applicant

respectfully requests reconsideration of the present application and allowance of all

claims now presented.

35 U.S.C. 102(e) Rejections

The Office Action rejected claims 1-5, 8-12 and 14-20 under 35 U.S.C. 102(e) as

being anticipated by Khotimsky, et al., U.S. Patent 6,788,686 (hereinafter *"Khotimsky"*).

The Applicant respectfully traverses.

Regarding claim 1, *Khotimsky* does not disclose or suggest "said assigning

preventing each data packet from including consecutive data frames."

Khotimsky describes splitting packets among different paths and reducing the

ambiguity that can occur when a "re-assembly engine a[t] the destination node is

presented with more than one packet carrying the same sequence number," even in

situations were "no packet has been lost in transmission." (*Khotimsky*, col. 2, lines 18-

20, 34-41).

In asserting that *Khotimsky* discloses or suggests claim 1, this and the previous

Office Actions have consistently interpreted *Khotimsky*'s disclosure of splitting packets

among different paths as describing the Applicant's disclosure of distributing data

frames among data packets. The Office Actions equate *Khotimsky*'s "packets"

(enumerated 0-7 in Figure 4) to the "data frames" of claim 1, and *Khotimsky's* "packet block" to the "data packet" of claim 1, as summarized in the table below:

Khotimsky	Office Action equates to claim 1's
"packets"	"data frames"
"packet blocks"	"data packets"

Based on the above interpretation of "data frames" and "data packets," the Office Action asserts that *Khotimsky* discloses "said assigning preventing each data packet from including consecutive data frames," as required by claim 1, by citing Figure 4 of *Khotimsky* and stating that "none of the assigned 0-7 frames on the 3 different paths are consecutive." (Office Action, mailed 12/28/05, p. 2).
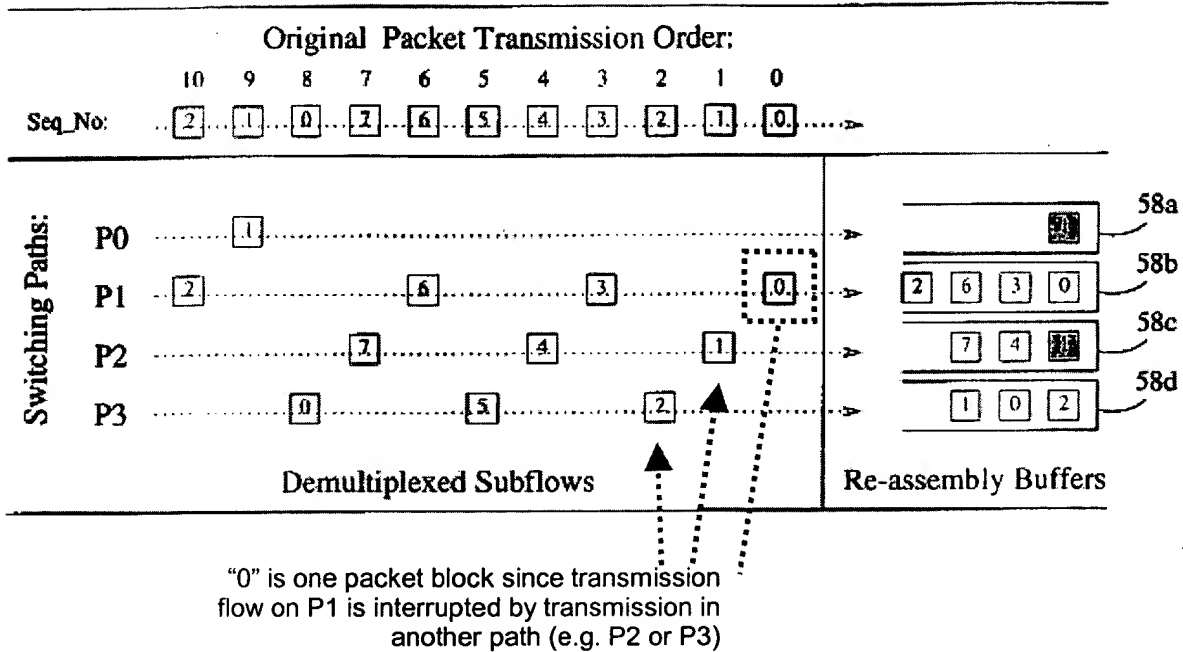
However, even under the above interpretation of "data frames" and "data packets," *Khotimsky* does not disclose or suggest "said assigning preventing each data packet from including consecutive data frames," as required by claim 1.

Khotimsky describes:

"As is used herein, <u>a packet</u> denotes a data unit of a split flow that is assigned its own sequence control header and <u>is transmitted on a single path</u> within a multipath switching system. ... <u>**A sequence of packets** of the same split flow consecutively **transmitted over given path A without being uninterrupted by packet transmissions on given path B constitute a packet block** of A with respect to B</u>." (*Khotimsky*, col. 4, lines 26-38).

Accordingly, per *Khotimsky's* definitions, each of the "packet blocks" shown in Figure 4 consists of a single packet ("data frame"), e.g. 0, as shown below:

Figure 4 of *Khotimsky* with annotations

Original Packet Transmission Order:

"0" is one packet block since transmission
flow on P1 is interrupted by transmission in
another path (e.g. P2 or P3)

None of the packet blocks ("data packets") in Figure 4 includes more than one packet ("data frame"). Accordingly, Figure 4 does not disclose or suggest that each packet block ("data packet") must include packet**s** ("data frame**s**"), let alone disclosing or suggesting "preventing each data packet from including consecutive data frames," as required by claim 1. *Khotimsky* does not elsewhere disclose or suggest "said assigning preventing each data packet from including consecutive data frames" as required by claim 1.

Moreover, *Khotimsky* does not disclose or suggest "wherein a data packet includes a packet header and each of the data frames included in the data packet is associated with the packet header," as also required by claim 1.

In *Khotimsky*, a "packet block does not carry any additional header information." (*Khotimsky*, col. 4, lines 38-39). In *Khotimsky*, each "packet...is assigned its own sequence control header." (*Khotimsky*, col. 4, lines 25-26). Therefore, in *Khotimsky*,

each of the packets ("data frames") included in a packet block ("data packet") is associated with a different header.

Khotimsky does not disclose or suggest that a packet block ("data packet") includes a packet header and that each of the packets ("data frames") included in the packet block is associated with the packet header. Therefore, *Khotimsky* does not disclose or suggest "wherein a data packet includes a packet header and each of the data frames included in the data packet is associated with the packet header," as required by claim 1.

Therefore, *Khotimsky* does not anticipate independent claim 1 for at least the foregoing reasons. Claims 2-5, 8, and 21 each depend, directly or indirectly, from independent claim 1. Therefore, *Khotimsky* fails to anticipate claims 2-5, 8, and 21 for at least the reasons discussed above with respect to claim 1.

Independent claims 9, 14 and 17 each include a limitation similar to the limitation of claim 1 of "said assigning preventing each data packet from including consecutive data frames." Specifically, independent claim 9 includes the limitation of "said distributing preventing each data packet from including consecutive data frames." Independent claims 14 and 17 each includes the limitation of "preventing each data packet from including consecutive data frames."

Therefore, *Khotimsky* also does not anticipate independent claims 9, 14 and 17 for at least the relevant reasons discussed above with regard to claim 1. Claims 10-12, 15-16 and 18-20 each depend, directly or indirectly, from one of the foregoing independent claims 9, 14 and 17. Therefore, *Khotimsky* also fails to anticipate claims

10-12, 15-16 and 18-20 for at least the reasons discussed above with respect to claims 9, 14 and 17. Withdrawal of the rejection is respectfully requested.

35 U.S.C. 103(a) Rejections

The Office Action rejected claims 6, 13, and 21 under 35 U.S.C. 103(a) as being unpatentable over *Khotimsky*. The Office Action asserts that the additional limitations of claims 6, 13, and 21 would have been obvious to one having skill in the art at the time the invention was made.

Claims 6, 13, and 21 depend, directly or indirectly, from one of the foregoing independent claims. In view of the above remarks, a specific discussion of these dependent claims is considered to be unnecessary. Therefore, the Applicant's silence regarding any dependent claim is not to be interpreted as agreement with, or acquiescence to, the rejection of such claim or as waiving any argument regarding that claim.

Accordingly, the Applicant respectfully requests withdrawal of the rejection of dependent claims under 35 U.S.C. 103(a) and respectfully submits that the dependent claims are also in condition for allowance.
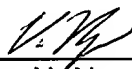
CONCLUSION

The Applicant respectfully submits that all rejections have been overcome and respectfully requests the allowance of all pending claims.

If there are any additional charges, please charge them to our Deposit Account Number 02-2666. If a telephone conference would facilitate the prosecution of this application, the Examiner is invited to contact Thomas C. Webster at (408) 720-8300.

Respectfully Submitted,
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